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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

CHARLES DANIEL . . . . . .PETITIONER

v.

EATON CORPORATION, et al . .RESPONDENT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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OPINION BELOW

The decision of the United States Court of Appeals for the Sixth Circuit is reported at 839 F. 2d 263 (1988).

STATEMENT OF THE CASE AND FACTS

Petitioner seeks to qualify for early retirement pension benefits under an

employee pension plan of which he is a beneficiary. The administrator of the pension plan determined that Petitioner was not eligible under the terms of the plan and therefore denied his request for early retirement. After exhausting his administrative remedies, Petitioner sought review in federal court under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq. ("ERISA"). The district court permitted de novo review of Petitioner's case but denied his request for a jury trial. The Sixth Circuit Court of Appeals held that it was an error for the district court to grant de novo review but affirmed the denial of Petitioner's request for a jury trial. Petitioner now seeks certiorari, claiming a conflict in the circuits respecting his right to a de novo trial by jury.

The dispute over Petitioner's eligibility for early retirement benefits centered on a determination of the proper "start date" of Petitioner's employment for the purposes of calculating the correct number of years of "credited service." Petitioner is covered by a pension plan under which an employee with thirty years of credited service is entitled to early retirement benefits.

Shuler Axel Company ("Shuler") initially hired Petitioner on January 5, 1953. (Tr. 35) Eaton Corporation ("Eaton") acquired Shuler on July 31, 1958. (Tr. 120) From the time that Petitioner was hired, and throughout his employment, Shuler employees were represented by the United Auto Workers union ("UAW"). (Tr. 118) Under a contract between the UAW and Shuler, laid-off employees were required to

contact the company by letter every six months during the lay-off period to indicate an interest in continued employment. (Tr. 111) Petitioner was laid off on August 17, 1953. Although he was subsequently rehired on May 3, 1954, Petitioner admits that during that lay-off period of over fifteen months he never sent a letter to Shuler as required by the collective bargaining agreement. (Tr. 38) On February 17, 1954 (six months after he was laid off), Petitioner was listed in Shuler's employment records as a "voluntary quit" because of his failure to notify the company as required under the contract. (Tr. 115) Therefore, when Petitioner returned to work on May 3, 1954, Shuler considered him to be a "new hire" and both Shuler and Eaton continuously, until the plant closed, recorded his seniority date as May 3, 1954. (TR. 116) No challenge to the

"incorrect" seniority date was ever raised by Petitioner until after the plant closed twenty-eight (28) years after his re-hire date. (Tr. 57, 59) Petitioner worked continuously from the date of his rehire until he was laid off in December of 1982.

Petitioner was covered by a pension plan known as Plan A-1 of the UAW Master Division Plan ("Plan"). (Tr. 101) The Plan was administered by the Central Board of Administration and by a Local Pension Committee at each plant. Under the Plan, an employee with thirty years of credited service was eligible for early retirement. (Tr. 105)

On February 6, 1983, the plant was closed. After learning of the pending plant closing, Petitioner applied for early retirement benefits. The Local Pension Committee calculated Petitioner's credited service as 29.2 years (Tr. 123) and held Petitioner did not qualify for

early retirement which required thirty (30) years of credited service.

Petitioner objected to the Plan Administrator's calculation of 29.2 years of credited service. Thereafter, the Plan Administrator ("Administrator") sent a letter to Petitioner explaining in detail the calculation of Petitioner's credited service. The letter disclosed that Petitioner was considered a new hire as of May 3, 1954, and that company records showed Petitioner was a "voluntary quit" on February 17, 1954, because Shuler had received no written request from him to return to employment after six months of lay-off. (Defendant's Exhibit 8) Enclosed with the Administrator's letter was a form for appealing the Administrator's determination to the Central Board of Administration for the Plan. Daniel appealed to the Central

Board of Administration, but the appeal was not acted upon.

Petitioner brought suit, disputing the Administrator's calculation of credited service, claiming that his proper "start date" should be January 5, 1953, rather than May 3, 1954.[1] Petitioner alleged that after the denial of his application for early retirement, he submitted an appeal to the Central Board of Administration, but that no action had been taken on his appeal.

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[1] Petitioner's attorney requested copies of the Plan and of the collective bargaining agreement that was in effect between Shuler and the UAW on February 17, 1954. Eaton was unable to locate a copy of the collective bargaining agreement, but did send a copy of the Plan. Because there was a 278-day delay in sending a copy of the Plan, a district court awarded Petitioner $6,950.00 pursuant to the civil enforcement provisions of ERISA § 502(c), 29 U.S.C. § 1132(c). Eaton has not appealed this award.

In his complaint, Petitioner named Eaton rather than the Central Board of Administration or the Local Pension Committee. Nevertheless, the trial court and Eaton proceeded on the basis of treating Eaton as the Administrator of the Plan. The district court permitted a de novo trial because Eaton had not acted on Petitioner's administrative appeal but denied Petitioner's request for a jury trial. (Tr. 4, 12-13)

On appeal, the Sixth Circuit Court of Appeals held that the district court erred in granting a de novo trial but was correct in denying the request for a jury trial. Daniel v. Eaton, 839 F. 2d 263, 267 (6th Cir. 1988). The Sixth Circuit reasoned that it did not matter that the Central Board of Administration failed to act on Daniel's appeal because, under regulations promulgated by the Secretary

of Labor pursuant to ERISA § 503, 29 U.S.C. § 1133, if a decision upon review is not provided to a claimant within 120 days, "the claim shall be deemed denied on review." Id. (citing 29 C.F.R. § 2560.503-1(h)(4)). The Sixth Circuit determined that Petitioner had exhausted his administrative remedies and that Petitioner's claim was "deemed denied on review." Therefore, the district court should have reviewed the Administrator's decision under an arbitrary and capricious standard, taking into account the entire record before the Administrator at the time of determination. Id. at 268. The Sixth Circuit then remanded the case to the district court for review of the record under the proper standard of review.

Petitioner has filed a Petition for Writ of Certiorari, claiming that a

conflict exists among the courts of appeals regarding a claimant's right to a jury trial in cases such as his. Specifically, Petitioner claims that he is entitled to a de novo trial by jury.

REASONS FOR DENYING THE WRIT

I. PETITION SHOULD NOT BE GRANTED BECAUSE THERE IS NO CONFLICT AMONG THE COURTS OF APPEALS REGARDING A BENEFICIARY'S RIGHT TO A JURY TRIAL IN A CLAIM FOR PENSION BENEFITS.

Petitioner has asked this Court to grant certiorari because he claims that there is a conflict among the courts of appeals. Such a conflict, however, does not exist. In addition to the Sixth Circuit in its opinion below, seven circuits have addressed the issue and all agree that there is no right to a jury trial in an action where the beneficiary of a pension fund sues the pension trustee for benefits due under the trust. See

Wardle v. Central States, Southeast and Southwest Areas Pension Fund, 627 F.2d 820, 830 (7th Cir. 1980), cert. denied, 449 U.S. 1112 (1981); Calamia v. Spivey, 632 F.2d 1235, 1237 (5th Cir. 1980); Turner v. CF&I Steel Corp., 770 F.2d 43, 47 (3rd Cir. 1985), cert. denied, 474 U.S. 1058 (1986); Katsaros v. Cody, 744 F.2d 270, 278 (2d Cir.), cert. denied, 469 U.S. 1072 (1984); Berry v. Ciba-Geigy Corp., 761 F.2d 1003, 1007 (4th Cir. 1985); Blau v. Del Monte Corp., 748 F.2d 1348, 1357 (9th Cir. 1984), cert. denied, 474 U.S. 865 (1985); In re Vorpahl, 695 F.2d 318, 322 (8th Cir. 1982).

The court of appeals to first address the issue was the Seventh Circuit in Wardle. The court held that suits for pension benefits by disappointed applicants are equitable and that ERISA does not grant plaintiff a right to a jury

trial. Wardle, 627 F.2d at 830. Each of the seven appellate court opinions decided after Wardle, including the Sixth Circuit in the opinion below, has agreed with the Seventh Circuit's position, citing Wardle for support. The most recent case, prior to the Sixth Circuit's opinion below, was decided by the Third Circuit in Turner v. CF&I Steel Corp., 770 F.2d 43 (3rd Cir. 1985), cert. denied, 474 U.S. 1058 (1986). That court also found no right to a jury trial, stating: "[t]he Courts of Appeals have almost uniformly agreed that jury trials are not available to resolve claims of the type presented here." Id. at 46. To support its claim, the Third Circuit cites opinions by the Second, Fourth, Fifth, Seventh, Eighth, and Ninth Circuits. See id. at 46-47.

The Sixth Circuit, in its opinion below, agrees with the seven other courts of appeals addressing the issue presented

here. See Daniel, 839 F. 2d at 268. It is clear, therefore, that the courts of appeals are in harmony on this issue and that a conflict among the circuits does not exist.

Petitioner attempts to create a conflict among the circuit courts by referring to two trial court opinions from the Southern District of New York that were superseded by a later Second Circuit decision. Petitioner relies primarily on Pollock v. Castrovinci, 476 F. Supp. 606 (S.D.N.Y. 1979), aff'd without opinion, 622 F.2d 575 (2d Cir. 1980). Petitioner also cites Paladino v. Taxicab Industry Pension Fund, 588 F. Supp. 37 (S.D.N.Y. 1984), a case which followed Pollock. Both cases found a right to a jury trial in suits by beneficiaries for pension benefits.

Petitioner, however, has overlooked a later Second Circuit decision that

squarely addresses the issue presented here. See Katsaros v. Cody, 744 F.2d 270 (2d Cir.), cert. denied, 469 U.S. 1072 (1984). In Katsaros, the court declined to follow Pollock and explained that the jury issue in Pollock was moot by the time of the appeal because no trial was held in that case. Id. at 279. Therefore, when Pollock was affirmed without opinion by the Second Circuit, the issue of a right to jury trial was not before the court. The Katsaros court clearly stated: "[g]iven what we view as the essentially equitable nature of Pollock's claim, we decline to follow the District Court's mooted ruling that a jury was required." Id. Katsaros therefore supersedes the district court's opinions in both Pollock and Paladino. The Katsaros opinion states the position of the Second Circuit, and because that position agrees with those of the other courts of appeals, there is no

conflict among the circuits on the issue presented here.[2]

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[2] In a recent case, one New York district court permitted a jury trial for a claim under ERISA by distinguishing its case from the otherwise binding opinion of the Second Circuit in Katsaros. See Abbarno v. Carborundum, 682 F. Supp. 179, 180-82 (W.D.N.Y. 1988). The Abbarno court thought that Katsaros did not create a per se rule against jury trials in all ERISA actions. Therefore, the trial court granted a request for a jury trial where plaintiff sought an award of damages for the non-payment of benefits, which the court viewed as an essentially legal claim. Id. at 181. The court said that absent a "clearer statement" from the Second Circuit, it would permit a jury in such a case. Id.

The district court opinion in Abbarno, of course, does not bind the Second Circuit, nor does it speak for the Second Circuit. However, even if Abbarno is correct, that case is distinguishable from Petitioner's case below. The Abbarno court said that plaintiffs' claim was legal because "they seek an award of damages for non-payment of benefits." Id. (emphasis supplied) The case below, however, is not a claim for damages, but instead involves a determination of what benefits plaintiff is entitled to receive from a pension fund. The Second Circuit in Katsaros, in agreement with the other courts of appeals, held that such actions are in equity and that a jury trial is not required. Katsaros, 744 F.2d at 279.

Petitioner also looks to the Seventh Circuit for examples of supposedly "confused" case law. He cites Wardle as denying a jury trial in ERISA cases and then cites Bugher v. Feightner, 722 F.2d 1356 (7th Cir. 1983), cert. denied, 469 U.S. 822 (1984), as permitting a jury trial in such cases. Petitioner has failed to perceive a crucial distinction between these two cases. Wardle was a suit by a beneficiary for benefits under a pension fund. Bugher, on the other hand, was a suit by pension fund trustees against an employer for delinquent payments owed by that employer under the provisions of a collective bargaining agreement. Wardle involved the review of a trustee's decision in administering a trust; Bugher was simply a contract dispute. The Seventh Circuit is obviously not confused by the two cases because in Bugher the court clearly stated: "[o]ur

holding herein does not conflict with this court's decision in [Wardle]." Bugher 722 F.2d at 1361.

II. PETITIONER WAS NOT ENTITLED TO A DE NOVO TRIAL TO REVIEW HIS ELIGIBILITY FOR PENSION BENEFITS.

Despite the unanimity of the courts of appeals in denying a jury trial in suits by beneficiaries for pension benefits, Petitioner claims he is still entitled to a jury trial, apparently because the parties to the case stipulated to a de novo trial. The Sixth Circuit held that permitting de novo review of Petitioner's case was error by the trial court. Daniel, 839 F. 2d at 267. Although Petitioner implies that he is entitled to a de novo trial to determine his eligibility to receive pension benefits, he does not offer a single argument, nor does he cite a single case, to support his position.

In contrast, there is established precedent in the Sixth Circuit and other

courts of appeals holding that a trial court is not to hold a de novo factual hearing on the question of an applicant's eligibility for benefits under a pension fund or other such trust funds. The Sixth Circuit has specifically rejected arguments that de novo review is proper in such cases. See Adcock v. Firestone Tire & Rubber Co., 822 F.2d 623, 626 (6th Cir. 1987). Other courts of appeals have also taken the same position. See Wardle, 627 F.2d at 824; Phillips v. Kennedy, 542 F.2d 52, 54 (8th Cir. 1976); Berry v. Ciba-Geigy Corp., 761 F.2d 1003, 1007 (4th Cir. 1985). Petitioner, therefore, was clearly not entitled to a de novo trial on the issue of his pension eligibility and the Sixth Circuit was correct in holding that such de novo review was error by the district court.

CONCLUSION

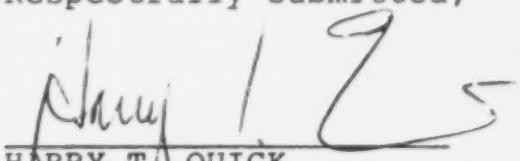
The Supreme Court long ago stated that petitions for certiorari should be granted only "in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of appeals." Layne & Bowler Corp. v. Western Well Works, 261 U.S. 387, 393 (1923). Certiorari is not granted "merely to give the defeated party in the Circuit Court of Appeals another hearing." Magnum Import Co. v. Coty, 262 U.S. 159, 163 (1923). The Rules of the Supreme Court of the United States require Petitioner to demonstrate a "special and important" reason for the Court to grant certiorari, such as a conflict among the circuits. See Sup. Ct. R. 17.1(a).

Petitioner has failed to demonstrate a conflict of any kind, "embarrassing" or otherwise, among the circuits. He has

also failed to show any other "special and important reasons" for the Court to grant certiorari.

Therefore, because the courts of appeals are uniformly in agreement on the issue of a beneficiary's right to a jury trial in a suit for pension benefits, and because Petitioner has no right to a de novo trial, Petitioner's Writ of Certiorari should be denied.

Respectfully submitted,



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Dated: July 14, 1988

CERTIFICATE OF SERVICE

A copy of this Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of appeals for the Sixth Circuit was sent by regular U.S. mail, postage prepaid, to Hollis L. Searcy, Esq. and Richard L. Masters, Esq., AMSHOFF, AMSHOFF & SEARCY, Attorneys for Petitioner, 1012 S. Fourth Street, P. O. Drawer 2848, Louisville, Kentucky 40201, this 14th day of July, 1988.

HARRY T. QUICK